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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,600	08/07/2003	Francois Girard	P23947	9581

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EXAMINER
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FISCHMANN, BRYAN R

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 07/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/635,600

Applicant(s)

GIRARD ET AL.

Examiner

Bryan Fischmann

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 10/054,913.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11-07-03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Acknowledgements***

1. The election filed 06-01-2005 has been entered.

***Election/Restriction***

2. A Restriction Requirement dated 5-11-2005 required a restriction between two species. Applicant elected to prosecute Species I (Figures 1-4), upon which Applicant identified claims 1-16 as being "readable" on the elected species.
3. Because applicant did not state whether the election was with or without traverse, the election has been treated as an election without traverse.
4. An action on the merits of the elected invention (Species I), claims 1-16 follows.

***Specification***

5. The specification is objected to because of the following:
  - A) In paragraph 0001, it is requested Applicant indicate that patent application 10/054,913 is abandoned.
  - B) The following recited phrases are unclear, awkwardly worded, and/or grammatically incorrect:
    - 1) Paragraph 0018 recites "Examples described below (with reference to FIGS. 8-11) are directed to the manner by which the linkage member 14 can be connected to the base 12, although such connection is not intended to be limiting to the invention. As a matter of fact, the invention can be implemented with various types of mechanisms in which the linkage member 14 is movable with respect to the base 12".

However, it is not considered readily apparent how Figures 8-11 are "incorporated" into the elected Species I, Figures 1-4.

For example, in Figures 1-4, the "linkage member" reference number 14 of Figures 1-4 appears to be fixed to the base 12 of a "sports article". In contrast, linkage member 130 of Figures 8 and 9 appears to be fixed to the boot and not the sports article, reference number 100. Similarly, in Figures 10 and 11, the linkage member 203 of Figures 10 and 11 appears to be fixed to the boot and not the sports article, reference number 214.

2) Paragraph 0032 recites "According to the second embodiment of the invention shown in FIGS. 5 to 7, the binding device, is adapted to be inserted between a boot 11...".

Figures 5-7 would appear to fail to illustrate reference number 11.

C) The following inconsistencies in nomenclature were noted:

1) Paragraph 0019 recites anchoring elements 31, 32. Paragraph 0019 then recites "front pin 31" and "rear pin 32". Paragraph 0020 recites "front cylindrical pin 31. Paragraph 0021 recites "transverse pin 31" and "pin 31". Paragraph 0024 recites "rear pin 32" and "pins 31, 32".

2) Paragraph 0022 recites "ramp 40". Paragraph 0023 recites "inclined surface 40".

3) Paragraph 0032 recites "sports apparatus 3". Paragraph 0033 recites "deck 3".

4) Paragraph 0032 recites "front transverse anchor 4". Paragraph 0038 recites "rod/pin 4". Paragraph 0048 recites "anchoring pin 4" and "front pin 4".

5) Paragraph 0033 recites both "transverse axis 80A" and "transverse axle 80A".

6) Paragraph 0033 recites "rear anchor part 24A". Paragraph 0040 recites "edge 24A".

7) Paragraph 0036 recites "second groove portion 17A". Paragraph 0038 recites "complementary groove portion 17A".

8) Paragraph 0036 recites "movable jaw or rocker 15A". Paragraph 0039 recites "rocker 15A" and nose 15a". Paragraph 0047 recites "movable jaw 15A". Paragraph 0047 recites unlatching member 15A" and "actuating member 15A". Paragraph 0047 also recites "unlatching member 15a".

9) Paragraph 0036 recites "return member 20A". Paragraph 0039 recites "energy lug 20A". Paragraph 0040 recites "elastic return member 20A" and "elastic return member 25A".

10) Paragraph 0040 recites "elastic return member 25A". Paragraph 0046 recites "rubber band 25A".

11) Paragraph 0040 recites "direction F4". Paragraph 0045 recites "force F4".

To avoid confusion to the reader, and to facilitate identifying components by nomenclature in the claims, it is requested Applicant use consistent nomenclature for the same reference number throughout the specification.

***Drawings***

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the description: 18', 26A and 37A. Correction is required.
7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference signs not mentioned in the description: 22A, 29, 31A, 39 and 21A. Correction is required.
8. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the linkage element movable with respect to the sports article between a low position and a high position, as recited in claims 1 and 12, the front retaining system being biased, as recited in claim 6, the connecting rod, as recited in claim 11, the convex surface as recited in claim 12 and the linkage member articulated with respect to a sports article as recited in claim 13 must be shown or the features canceled from the claims. No new matter should be entered.

Regarding claims 1, 12 and 13, see the 112 1<sup>st</sup> paragraph rejection of claim 1.

9. Figures 8-11 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).

As best understood, Figures 8-11 are figures from published patents incorporated by reference that already appear in these previous patents and therefore, as best understood, are not part of the Instant Invention.

10. It is unclear why reference number 15A on Figure 6 does not appear to resemble reference number 15A on Figure 7.

Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

12. Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Claim 1 recites "...a linkage element movable with respect to the sports article between a low position and a high position...".

Lack of possession of the invention due to inadequate written description is applicable due to the following:

A) Support for the above claim 1 recitation is best understood to be set forth in paragraph 0018 which recites "Examples described below (with reference to FIGS. 8-11) are directed to the manner by which the linkage member 14 can be connected to the base 12, although such connection is not intended to be limiting to the invention. As a matter of fact, the invention can be implemented with various types of mechanisms in which the linkage member 14 is movable with respect to the base 12".

B) However, it is not considered readily apparent how Figures 8-11 are "incorporated" into the elected Species I, Figures 1-4.

C) For example, in Figures 1-4, the "linkage member" reference number 14 of Figures 1-4 appears to be fixed to the base 12 of a "sports article". In contrast, linkage member 130 of Figures 8 and 9 appears to be fixed to the boot and not the sports article, reference number 100. Similarly, in Figures 10 and 11, the linkage member 203 of Figures 10 and 11 appears to be fixed to the boot and not the sports article, reference number 214.

To expand on this, note that a purpose of the Instant Invention, as best understood, is to allow easy "fastening" and unfastening" of the boot to the linkage member. If the boot is already fastened to the linkage member, per Figures 8-11, then it is not clear how Figures 1-4 would be "applicable" to Figures 8-11

Due to this, it is apparent the inventor did not have possession of the claimed invention of claim 1 at the time the invention was made.



Similarly, it is also not apparent what the convex surface set forth in claim 12 is. Note claim 12 describes the "convex surface" in relation to the linkage member "high and low positions".

Additionally, it is not apparent what the articulation of the linkage member, as set forth in claim 13 is, or how this is possible for reasons set forth above.

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicants regard as their invention.

Note: The claims are considered to be replete with unclear matter. Therefore, a comprehensive listing of all unclear matter cannot be guaranteed. Applicant is advised to review all claims for unclear matter.

A) The limitation of "a linkage element movable with respect to the sports article between a low position and a high position" as recited in claim 1 is considered unclear for reasons set forth in the 112 1<sup>st</sup> portion of this Office Action. Also, the disclosure leaves unclear whether the linkage member is attached to a sports article, per Figures 1-4, or to the boot, per Figures 8-11.

See also claim 12 for a similar rejection.

B) Claim 1 recites the limitation "the linkage member". There is insufficient antecedent basis for this limitation in the claim.

C) Claim 11 recites "...a connecting rod...". It is considered unclear what portion of the supporting bracket comprises the "cap member" since this term does not correspond to nomenclature used in the specification, particularly nomenclature associated with a reference number and related to structure on the drawing figures of elected Species I, Figures 1-4.

Note that Section 608.01 (o) and 2173.05(a) of the MPEP requires that nomenclature used in the claims be apparent from the specification, unless it is apparent from the prior art.

Note that Section 608.01(g) of the MPEP also recites "The description is a dictionary for the claims and should provide clear antecedent basis for all terms used in the claims".

D) As noted in the 112 1<sup>st</sup> portion of this Office Action, it is considered unclear what structure in elected Species I, Figures 1-4 corresponds to the convex surface recited in claim 12.

E) As noted in the 112 1<sup>st</sup> portion of this Office Action, it is considered unclear what structure in elected Species I, Figures 1-4 corresponds to the "articulation" recited in claim 13.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Bejean, Girard – teach cross-country type ski bindings

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16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (571) 272-6694. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 7-6-5  
BRYAN FISCHMANN  
PRIMARY EXAMINER